with the relevant provisions of the Act and they would be liable to a fine or imprisonment.

Our attention has also been drawn to a case *In re Anglo-Russian Merchant Traders and John Batt & Co. (London)*(2) which Mr. Hepworth submitted provides the answer to the question under consideration. It is pertinent to the present case to the extent that if the respondents should effect delivery pursuant to the contracts, there would have been in law a sale of copra, i.e., a purchase by the appellants in breach of the relevant provisions and would constitute an illegal performance of the contract.

On consideration it is our finding that by reason of the fact that the legal prohibition was in existence prior to the contracts being entered into such contracts were clearly in contravention of the law such that the consideration was unlawful and therefore void.

For these reasons, this appeal must fail and it is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *Thillaimuthu & Phock Kin; N. Patkunam & Co.*

DATUK ABU MANSOR BIN MOHAMED NASIR v. BANK KERJASAMA RAKYAT MALAYSIA BHD. & ANOR.

[F.C. (Wan Suleiman F.J., Mohamed Azmi & Hashim Yeop A. Sani JJ.)
December 5, 1981 & January 15, 1982]

[Kuala Lumpur — Federal Court Civil Appeal No. 12 of 1978]

Practice and Procedure — Attachment before judgment — Application to set aside — Whether person had handed over great deal of his property with intent to obstruct or delay judgment — Whether fresh evidence can be introduced at hearing of application to set aside order for attachment — Debtors Ordinance, 1957, s. 19(1)(c).

In this case the appellant had applied to set aside an *ex-parte* order of attachment before judgment made pursuant to section 19(1)(c) of the Debtors Ordinance at the instance of the respondents and also an *ex parte* order directing the appellant to declare on oath full particulars of his movable and immovable properties and an injunction restraining the appellant until the trial of the civil suit from exercising any powers or rights which he might have as a director or shareholder in any company. The application had been dismissed in the High Court.

Held: (1) Section 19(1)(c) of the Debtors Ordinance 1957 does not debar a person from dealing with his property merely because a suit has been filed against him. There must be additional circumstances before the court can be satisfied that he is disposing of the property with intent to defraud the plaintiff;

(2) in this case there was no evidence on which the learned judge could be satisfied that the appellant had handed over a great deal of his property or money to others with intent to obstruct or delay any judgment which the respondents might obtain against him;

(3) the sales of the lands relied on at the application for attachment before judgment were not ordinary sales from which an intent to obstruct or delay could obviously be drawn. The sales were necessary to avoid foreclosure proceedings by two banks in respect of an unpaid loan;

(4) fresh evidence could not be introduced at the hearing of an application to set aside the *ex-parte* order made in chambers, as such evidence was not before the learned judge and he could not have exercised his discretion in matters unknown to him;

(5) the order requiring the appellant to declare all his assets and the order of injunction were clearly outside the scope of the Debtors Ordinance and must be set aside.

Cases referred to:-

(1) *Kepong Prospecting Ltd.* v. *Schmidt* [1962] M.L.J. 375, 377.

(2) *Nanyang Development (1966) Sdn. Bhd.* v. *Malaysian Armed Forces Co-operative Housing Society Ltd.* [1972] 2 M.L.J. 149.

(3) *Munns* v. *Longden* 32 W.R. 675; 50 L.T. 356.

[The following cases were also referred to in argument: *Hari Singh* v. *Sundarammal* [1965] 2 M.L.J. 174; *Amanullah* v. *Nazir Ahmad* [1969] 2 M.L.J. 1, and *Public Prosecutor* v. *Datuk Haji Harun bin Haji Idris & Ors.* [1977] 1 M.L.J. 180.]

FEDERAL COURT.

K.L. Rekhraj (*Zaitoon Dato Othman* with him) for the appellant.

Mohamed Ismail for the respondents.

Cur. Adv. Vult.

Mohamed Azmi J. (delivering the judgment of the Court): This is an appeal against the decision of a judge dated January 23, 1978 dismissing the appellant's application to set aside an *ex-parte* order of attachment before judgment made on November 16, 1977 in respect of the movable properties of the appellant subject to a limit of $8.3 million. The *ex-parte* order of November 16 was made pursuant to section 19(1)(c) of the Debtors Ordinance 1957, at the instance of the two respondents who are the plaintiffs in Kuala Lumpur High Court Civil Suit No. 2110/1977 in which the appellant as second defendant is being sued with four others, namely Datuk Harun bin Haji Idris (first defendant), Ismail bin Din (third defendant), Tinju Dunia Sdn. Bhd. (fourth defendant) and Citibank N.A. (fifth defendant). By paragraph 1 of the statement of claim endorsed in the general writ of summons issued on July 22, 1977, the first respondent's claim against the appellant, first defendant and third defendant jointly and severally, is for the sum of $7.7 million, and by paragraph 4, the second respondent's claim against the appellant is for the sum of $8.3 million or such other sum as may be found due for loss caused or occasioned to the second respondent by him by breach of trust, alternatively by breach of fiduciary duties or further alternatively by fraud committed on the second respondent.

The respondents' summons in chambers dated November 14, 1977, which was heard *ex-parte* in chambers, was supported by two affidavits — one sworn by Ibrahim bin Hashim, the General Manager and Secretary of first respondent Bank, and the other by Zubir bin Haji Dahan, the Acting Secretary of second respondent company. Based on these two affidavits, it is argued by Mr. Rekhraj, counsel for the appellant, that there was insufficient evidence on which an order of attachment before judgment could have lawfully been made. It is also argued before us that the other *ex-parte* orders made on the same date directing the appellant to declare on oath full particulars of his movable and immovable properties (order No. 2) and an injunction restraining the appellant until

the trial of the civil suit from exercising any powers or rights which he might have as a director or shareholder in any company (order No. 3) are beyond the scope of section 19 of the Debtors Ordinance.

The part of section 19(1)(c) Debtors Ordinance 1957 with which we are concerned, reads as follows:—

"If it is shown to the satisfaction of the court, at any time after the issue of a writ of summons, by evidence on oath, that the plaintiff has a good cause of action against the defendant, and — that the defendant, with intent to obstruct or delay the execution of any judgment which has been or may be made against him, has removed, or is about to remove, or has concealed, or is concealing, or making away with, or handing over to others, any of his movable or immovable property; the court may order that the property of the defendant, or any part thereof, be forthwith seized or attached by the appropriate officer as a pledge or surety to answer the just demand of the plaintiff, until the trial of the action and satisfaction of any judgment that may be made against the defendant but such order shall not constitute the plaintiff a secured creditor if the defendant is adjudicated bankrupt."

In this appeal, we agree with the legal proposition that section 19(1)(c Debtors Ordinance 1957 does not debar a man from dealing with his property merely because a suit has been filed against him. Otherwise, in every case in which a suit is brought against a man, if during the pendency of the proceedings, he sells some of his property, that would be at once a sufficient ground to satisfy the court that he is disposing of his property with intent to defraud the plaintiff. There must be additional circumstances before the court can be satisfied that such an intention exists. (See *Kepong Prospecting Ltd.* v. *Schmidt*[1]).

The main issue for determination in this appeal is whether there was any evidence or sufficient evidence based on the affidavit of Ibrahim bin Hashim and affidavit of Zubir bin Haji Dahan, both sworn on November 14, 1977 that (a) the respondents had a good cause of action against the appellant; (b) the appellant had handed over a great deal of his property or money to others; and (c) he did so with intent to obstruct or delay any judgment the respondent might have. Zubir's affidavit is merely an adoption of the affidavit sworn by Ibrahim, and as such the present appeal will stand or fall on Ibrahim's affidavit. On the face of this affidavit, there was clearly sufficient evidence before the learned judge to be satisfied with (a) that the respondents had a good cause of action against the appellant for breach of trust, breach of fiduciary duties and breach of contract of service. What is not clear is whether there was evidence on which the learned judge could be satisfied as regards (b) and (c), i.e. that the appellant had handed over a great deal of his property or money to others with intent to obstruct or delay any judgment the respondents might obtain from Civil Suit No. 2110 of 1977. From paragraph 7 of Ibrahim's affidavit, the appellant or companies in which he had a controlling interest, owned the following known properties:—

(1) Appellant's residence at No. 34A Jalan Tengku Ampuan, Taman Duta, Kuala Lumpur, and the property adjacent to it.

(2) Properties known as Nos. 197 and 199, Jalan Ampang, Kuala Lumpur.

(3) Land held under EMR 2396, for Lot 273 in the Mukim of Ampang.

(4) A piece of land in Port Dickson.

(5) Shares in —

(a) Belmont Properties Sdn. Bhd.

(b) Manville Corporation Sdn. Bhd.

(c) Mona Sdn. Bhd.

(d) Kuala Lumpur Kepong Bhd.

(e) Benaan Muda Properties Sdn. Bhd.

(f) Taman Riang Properties Sdn. Bhd.

(g) Belmont Management Services Sdn. Bhd.

(6) A piece of land in Ulu Kelang.

There is no evidence as to what is the total approximate value of all these assets, but we assume it must be substantial and more than sufficient to satisfy any judgment the respondents might obtain in Civil Suit No. 2110 of 1977. Be that as it may, the assets which the appellant is alleged to have disposed with intent to obstruct or delay the execution of any judgment is property No. 5(b), viz. shares in Manville Corporation Sdn. Bhd., a company in which the appellant owned a controlling interest. The transaction complained of is contained in paragraph 9 of Ibrahim's affidavit. Although the appellant did not dispose of his shares in the company, by selling the company's assets, he had adversely reduced the value of the shares. That must have been the real complaint of the respondents. The impugned transaction involved the sales of six parcels of land in Kuala Lumpur (Grant Nos. 3563, 3556, 3557, 3565, 3566 and 3558 for Lot Nos. 269, 261, 262, 587, 588 and 263 respectively in the Mukim of Ampang) by Manville Corporation Sdn. Bhd. to Madison Garden Sdn. Bhd. on August 10, 1977, i.e. about two months after the writ in C.S. 2110/77 was filed and served on the appellant. What has not been disclosed in Ibrahim's affidavit is the nature of these sales. In our view, this is fatal to the respondents' application for the *ex-parte* order in view of the fact that evidence of intention to obstruct or delay on the part of the appellant could only be inferred or drawn from the August 10 transaction. (See *Nanyang Development (1966) Sdn. Bhd.* v. *Malaysian Armed Forces Co-operative Housing Society Ltd.*[2]). From subsequent affidavits, it has now come to light that the sales by Manville Corporation to Madison Garden Sdn. Bhd. were not ordinary sales from which an intention to obstruct or delay could obviously be drawn.

The six parcels of land and another property EMR 2396 Lot 273 in the Mukim of Ampang were charged by Manville Corporation to Kwong Yik Bank Berhad and Malayan Banking Berhad to secure loan facilities, and power of attorney in respect of the properties charged was granted to the two Banks as early as October 11, 1976, i.e. more than nine months before the filing of the writ against the appellant, empowering the two Banks to sell the properties charged for the settlement of outstanding loans. In fact, the six parcels of land were first charged to Kwong Yik Bank in April 1973. The sales were necessary to avoid a foreclosure proceedings by the two Banks against Manville Corporation in respect of unpaid loan. Out of the proceeds of sale of $4 million, Kwong Yik Bank took $3 million and Malayan Banking $900,000. In the circumstances, it is our view that there was in-

sufficient evidence on oath before the trial judge on which he could be satisfied either by inference or otherwise that the appellant had sold the properties on August 10, with intent to obstruct or delay the execution of any judgment which might be made against him. In our view, the fact that the appellant had been convicted by the High Court in Kuala Lumpur together with the first and third defendants on criminal charges from the transactions which are among the subject matter of these proceedings and an appeal against conviction was then pending in the Federal Court, does not help the respondents to prove the necessary intention of the appellant in view of the nature of the sale transaction. As correctly stated by deponent Ibrahim in paragraph 5 of his affidavit, the result of the criminal case would not directly affect the present civil proceedings. Although in subsequent affidavit of Ibrahim sworn on January 17, 1978 it was disclosed that appellant had also disposed of property No. (1), viz, his residence at No. 34A Jalan Tengku Ampuan, the transfer of the matrimonial home was in fact to his own wife in respect of a quarter share and the remaining three-quarter share to her as trustee, the consideration being natural love and affection. It was transferred on April 17, 1976 whilst the criminal prosecution was pending against the appellant, and it was about a year and three months before the writ in Civil Suit No. 2110/1977 was filed. But this 1976 transfer, which could have been discovered from the Land Office Registry, was not disclosed to the learned judge when the *ex parte* order was made, and as such he could not have exercised his discretion in matters unknown to him. Having considered the decision of *Munns* v. *Longden*,[3] we are satisfied that in the circumstances of this case fresh evidence should not be introduced at the hearing of an application to set aside the *ex-parte* order made in chambers.

Accordingly, we allow this appeal, and set aside all the *ex-parte* orders made on November 16, 1977. The order requiring the appellant to declare all his assets and the order of injunction are clearly outside the scope of the Debtors Ordinance. The respondents must pay the costs.

Application dismissed.

Solicitors: *Zaitoon Othman & Associates.*

ZAINAL ABIDIN BIN HAJI ABDUL RAHMAN v. CENTURY HOTEL SDN. BHD.

[F.C. (Raja Azlan Shah C.J. (Malaya), Syed Othman F.J. & Mohamed Azmi J.) November 5, 1981 & January 22, 1982]

[Kuala Lumpur — Federal Court Civil Appeal No. 189 of 1981]

Practice and Procedure — Interlocutory injunction in advance of judgment — Mareva injunction — Whether court in Malaysia has jurisdiction to issue — Whether injunction should be issued — No evidence of danger that assets of defendant would be dissipated — Courts of Judicature Act, 1964 Schedule, para. 6.

This was an appeal from the decision of Hashim Yeop A. Sani J. reported in [1982] 1 M.L.J. 40. The respondent had let the third floor of a nine-storey building belonging to them to the appellant for purposes of running a recreation centre. The respondent subsequently decided to close the hotel business run by them and they informed the appellant that there would no longer be guests of the hotel requiring the services provided by the appellant. The appellant issued a writ claiming wrongful repudiation of the contract and damages. The appellant then filed a notice of motion to restrain the respondent from selling, transferring or in any manner whatsoever disposing of the land and building until the hearing and disposal of the suit or until further order. He claimed that if the land and building were sold he would be deprived of the fruits of any judgment he might obtain against the respondent. Hashim Yeop A. Sani J. dismissed the application as he held *inter alia* that the relief sought by the appellant was unknown in our law as there was no equivalent to section 45 of the English Court of Judicature (Consolidation) Act, 1925. He also held that the appellant had not disclosed sufficient grounds to justify any intervention by the court.

Held: (1) the High Court in Malaysia has jurisdiction to grant a *Mareva* injunction in appropriate circumstances, as the provisions of paragraph 6 of the Schedule to the Courts of Judicature Act, 1964, are the equivalent of the provisions of section 45 of the English Court of Judicature (Consolidation) Act, 1925;

(2) in this case although the appellant has raised a serious question to be tried on the question of the damage he has suffered by reason of the alleged wrongful repudiation of the lease agreement, there was no evidence to show that there was a danger that the available assets of the respondent would be dissipated to prejudice the appellant's claim;

(3) in the circumstances it would not be proper to make the order sought by the appellant against the respondent.

Cases referred to:-

(1) *Nippon Yusen Kaisha* v. *Karageorgis & Anor.* [1975] 3 All E.R. 282.

(2) *A.J. Bekhor & Co. Ltd.* v. *Bilton* [1981] 2 W.L.R. 601; [1981] 2 All E.R. 565.

(3) *Allen* v. *Jambo Holdings Ltd. & Ors.* [1980] 2 All E.R. 502.

(4) *Barclay-Johnson* v. *Yuill* [1980] 3 All E.R. 190.

(5) *Cretanor Maritime Co. Ltd.* v. *Irish Maritime Management Ltd.* [1978] 1 Lloyd's Rep. 425.

(6) *Third Chandris Shipping Corporation & Ors.* v. *Uni-Marine SA* [1979] 2 All E.R. 972, 985-986.

(7) *Mareva Compania Naviera S.A.* v. *International Bulk Carriers S.A.* [1980] 1 All E.R. 213; [1975] 2 Lloyd's Rep. 509.

(8) *Hunt* v. *BP Exploration Company (Libya) Ltd.* [1980] 1 N.Z.L.R. 104.

(9) *Yeng Hing Enterprise Sdn. Bhd.* v. *Liow Su Fah* [1979] 2 M.L.J. 240, 244.

FEDERAL COURT.

Sri Ram for the appellant.

Raja Abdul Aziz Addruse for the respondent.

Cur. Adv. Vult.